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Attorney for Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA**

In re:

Case No. BKN-17-50783 BTB  
Chapter -11-

BETRA MFG. CO .

Debtor.

**MOTION PURSUANT TO  
11 U.S.C. Sections 105(a) and 363©  
FOR INTERIM AND FINAL ORDERS  
AUTHORIZING DEBTOR'S USE  
OF CASH COLLATERAL**

Hearing Date: TBA  
Hearing Time TBA

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COMES NOW, BETRA MFG. CO. (Herein, "Debtor" or "Debtor-in-Possession"),  
by and through proposed counsel Stephen G. Young, Esq. who moves this Court for interim  
and final orders pursuant to 11 U.S.C. 105(a) and 363© and Federal Rules of Bankruptcy  
Procedure 4001, 6003(b) and 6004 (1) (herein, "BKRП") authorizing use of cash collateral for  
ordinary course of business costs and expenses and Chapter 11 administrative costs, and (2)  
waiving the notice requirements under BKRП Rule 6004(a) , to the extent applicable, and the  
fourteen day stay under BKRП Rule 6004(h).

This Motion is supported by the following Point and Authorities, the Declaration of  
Gino DiSimone for Interim and Final Orders Authorizing Debtor's Use of Cash Collateral (  
"DiSimone Declaration" ") , and Creditor Documents (attached as Exhibit A) and the  
pleadings and papers already on file herein

This Motion does not affirm or validate any lien or encumbrance and sets forth only  
matters of record and Debtor reserves the right to challenge any claim to a security interest.

DATED this 1<sup>st</sup> Day of July, 2017

/s/ STEPHEN G. YOUNG

Proposed Counsel for Debtor

POINTS AND AUTHORITIES

**Factual Background and Overview of Betra:** (Debtor herein)

1. Debtor is long time and respected Carson City area manufacturing concern founded by Mark and Suzanne Thomas in the 1950s.

2. Debtor is engaged in foundry services and is located at 45 Affonso Lane in the Mound House, Nevada, 89706.

3. Debtor leases its premises from its President, Suzanne Thomas.

4. Debtor has proven itself as a profitable enterprise over many years.

5. On or about 2011 and after Debtor suffered greatly from the misconduct of a general manager who falsified critical test reports of the company's metal production, among other wrongs, and caused substantial damage to its reputation and in a loss of customers.

6. The Debtor prevailed in its lawsuit against said individual, but only at great financial expense. Counsel believes no monetary damages were awarded the Debtor. Mrs. Suzanne Thomas regained control of the Debtor as a 100 per cent shareholder.

7. In 2017 company founder Mark Thomas passed away. Mrs. Suzanne Thomas, age 86, was left a widow and the company now has a new General Manager, Mr. Gino DiSimone.

8. After 2017 the Debtor was forced to incur a number of loans from private lenders while its reputation was being restored. Debtor does not dispute that said lenders hold presumptively valid UCC-1 liens against company assets.

9. The Debtor has a long track record of success. However, Debtors principals currently anticipate a 11 USC 363 sale coupled with a sale by Mrs. Thomas of her land and building. In effect "a sale of the company".

10. Interested parties have already appeared

11. As such it critical that Debtor continue operating un-interrupted as a going concern and that is the underlying dynamic for the filing of this case,

**Facts Pertinent to Requested Relief:**

1. Counsel has conducted a UCC filing search with the Nevada Secretary State and located several active filings concerning Debtor. Counsel has ordered a report, but the information is not available at present.

2. A filing by creditor FOX CAPITAL GROUP, security agreement, and lending contract is attached heretoe as Exhibit A

1 3. Debtor will amend Exhibit A when the full report becomes available.

2 The following is a breakdown of additional facts according to proof at hearing:

3 1. Suzanne Thomas is a 100% shareholder of BETRA.

4 2. Ms. Thomas owns 45 Affonso Drive, the company property, appraised value  
5 \$1, 100,000

6 3. The Affonso Drive property (Land and large building for manufacture) is  
7 encumbered by a First Deed of Trust held by Heritage Bank in the amount of approx.  
8 \$768,000 and possibly more.

9 4. It is estimated that BETRA manufacturing even as a stand alone entity might be  
10 sold for \$ 1,200,000. (Based on current sales 12-mon. of \$250,000.)

11 5. Current secured liens for UCC holders filed against BETRA's assets are estimated  
12 as of today at \$575,000. (Current cash approx. \$115,000)

13 6. However, leasehold of equipment commitments could affect the sales price of the  
14 Debtor. (Approx. \$220,000)

15 **Legal Standards:**

16 11 USC 105(a) states in pertinent part:

17 “a) The court may issue any order, process, or judgment that is necessary or  
18 appropriate to carry out the provisions of this title. No provision of this title  
19 providing for the raising of an issue by a party in interest shall be construed to  
20 preclude the court from, sua sponte, taking any action or making any determination  
21 necessary or appropriate to enforce or implement court orders or rules, or to prev  
22 an abuse of process’.

23 11 USC 363(a) defines cash collateral:

24 “(a) In this section, “cash collateral” means cash, negotiable instruments, documents  
25 of title, securities, deposit accounts, or other cash equivalents whenever acquired in  
26 which the estate and an entity other than the estate have an interest and includes the  
27

proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts...’

11 USC 363(c)(2) states in pertinent part

“The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless—

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section...

11 USC 363c(3) states:

“‘If the hearing under paragraph (2)(B) of this subsection is a preliminary hearing, **the court may authorize such use, sale, or lease only if there is a reasonable likelihood that the trustee will prevail at the final hearing** under subsection (e) of this section. The court shall act promptly on any request for authorization under paragraph (2)(B) of this subsection.”

[emphasis ours]”

#### **Argument and Analysis:**

At the outset, the Debtor requires the use of cash collateral to avoid immediate and irreparable harm to the estate pending a final hearing. At all costs BETRA must be sold as going business. The need to satisfy existing customer orders is pressing.

Debtor has the burden of proof (citation omitted) and must demonstrate it can provide adequate protection of a secured creditors interests. (Citation Omitted)

Debtor contends that facts already cited prove there exists an “equity cushion” that will provide adequate protection to allowed secured claims (i.e. “the UCC filings”) , Debtor will produce evidence at hearing that the prospective sale price of BETRA (with land) exceeds all secured claims. See In re Mellor, 734 F.2d 1396, 1400, (9<sup>th</sup> Cir. 1984). See

1 Declaration of Gino Disimone, etc. filed separately.

2 Additional “cushion” derives from the fact that an overdue receivable has been  
3 collected in the amount of approx. \$50,000 and has been deposited in Debtor’s DIP account in  
4 addition to funds on hand estimated at \$65,000.

5 **Conclusion:** Evidence presented by the Desimone Declaration proves a “reasonable  
6 likelihood of success” at hearing.

7 **Relief Requested:**

8 1. That the Court issue an Interim Order that Debtor may use cash collateral pending further  
9 proceedings.

10 2. That a hearing be set.

11 3. For such other Relief as the Court may deem appropriate.

12 Respectfully submitted this 1<sup>st</sup> Day of July, 2017.

13 /s/ Stephen G. Young  
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